

AMENDED IN ASSEMBLY JULY 9, 1998

AMENDED IN ASSEMBLY JUNE 25, 1998

AMENDED IN SENATE APRIL 21, 1998

AMENDED IN SENATE MARCH 17, 1998

SENATE BILL

No. 1768

Introduced by Senator Kopp
(Coauthors: Senators ~~McPherson~~ Ayala, McPherson, and
Rainey)

February 18, 1998

An act to amend, repeal, and add Section 2033.5 of the Code of Civil Procedure, and to amend Section 11177.2 of, and to amend, repeal, and add Sections 987, 1202.4, and 1214 of, the Penal Code, relating to criminal restitution.

LEGISLATIVE COUNSEL'S DIGEST

SB 1768, as amended, Kopp. Criminal restitution: disclosure of financial information.

(1) Under existing law, a person convicted of a crime is required to make restitution to any victim in the amount of the economic losses suffered by a victim as a result of the criminal conduct. Under existing law, the victim may enforce the restitution order as a civil money judgment, and may obtain access to the criminal defendant's financial records and information regarding his or her assets. Additionally, costs incurred under this existing procedure by the victim in attempting to collect under the restitution order are recoverable from the criminal defendant.

This bill would require the defendant, in any case in which a restitution order is entered, to prepare and file a disclosure identifying all assets owned or controlled by the defendant as of the date on which the defendant was arrested, as well as other information relating to the defendant's financial resources. This financial disclosure would be available to the victim. The bill also would authorize the victim to access confidential financial information filed by the defendant for purposes of determining his or her ability to employ defense counsel, when the defendant fails to file the financial disclosure required by these provisions.

The bill would authorize the court to consider the defendant's unreasonable failure to make the disclosure as a circumstance in aggravation of the crime for purposes of imposing the sentence, and a factor indicating that the interests of justice would not be served by admitting the defendant to probation, conditionally sentencing the defendant, or imposing less than the maximum fine and sentence fixed by law. The bill would also make it a misdemeanor for any defendant to willfully state, on the required financial disclosure form, any material matter that he or she knows to be false, *unless this conduct is punishable as perjury or another provision of law provides for a greater penalty*. The bill would provide that these provisions shall become operative on January 1, 2000, unless an extension is granted by the Judicial Council, as specified. By creating a new crime, this bill would impose a state-mandated local program.

The bill also would require the Judicial Council to develop and approve form interrogatories for the use of the victim in seeking to collect under the criminal restitution order and a form for the financial statement and the information required to be disclosed on it pursuant to these provisions. The bill would provide that these provisions shall become operative on January 1, 2000.

(2) Existing law prohibits an inmate from being released on parole to reside in any receiving state if the parolee is subject to an unsatisfied order of restitution to a victim within the sending state with certain exceptions.



This bill would make technical changes to these provisions for purposes of clarification and would state that those provisions may not be construed to allow the reduction or waiver of a restitution order or fine.

(3) *The bill would declare that its provisions are severable.*

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2033.5 of the Code of Civil
2 Procedure is amended to read:
3 2033.5. The Judicial Council shall develop and
4 approve official form interrogatories and requests for
5 admission of the genuineness of any relevant documents
6 or of the truth of any relevant matters of fact in any civil
7 action in a state court based on personal injury, property
8 damage, wrongful death, unlawful detainer, breach of
9 contract, family law, or fraud. Use of the approved form
10 interrogatories and requests for admission shall be
11 optional.
12 In developing the form interrogatories and requests for
13 admission required by this section, the Judicial Council
14 shall consult with a representative advisory committee
15 which shall include, but not be limited to, representatives
16 of the plaintiff's bar, the defense bar, the public interest
17 bar, court administrators, and the public. The form
18 interrogatories and requests for admission shall be
19 drafted in nontechnical language and shall be made
20 available through the office of the clerk of the
21 appropriate trial court.
22 The Judicial Council also shall promulgate any
23 necessary rules to govern the use of the form
24 interrogatories and requests for admission.

1 This section shall remain in effect only until January 1,
2 2000, and as of that date is repealed, unless a later enacted
3 statute, that is enacted before January 1, 2000, deletes or
4 extends that date.

5 SEC. 2. Section 2033.5 is added to the Code of Civil
6 Procedure, to read:

7 2033.5. (a) The Judicial Council shall develop and
8 approve official form interrogatories and requests for
9 admission of the genuineness of any relevant documents
10 or of the truth of any relevant matters of fact in any civil
11 action in a state court based on personal injury, property
12 damage, wrongful death, unlawful detainer, breach of
13 contract, family law, or fraud. Use of the approved form
14 interrogatories and requests for admission shall be
15 optional.

16 (b) In developing the form interrogatories and
17 requests for admission required by this section, the
18 Judicial Council shall consult with a representative
19 advisory committee which shall include, but not be
20 limited to, representatives of the plaintiff's bar, the
21 defense bar, the public interest bar, court administrators,
22 and the public. The form interrogatories and requests for
23 admission shall be drafted in nontechnical language and
24 shall be made available through the office of the clerk of
25 the appropriate trial court.

26 (c) The Judicial Council also shall promulgate any
27 necessary rules to govern the use of the form
28 interrogatories and requests for admission.

29 (d) The Judicial Council shall develop and approve
30 official form interrogatories for use by a victim who has
31 not received complete payment of a restitution order
32 made pursuant to Section 1202.4 of the Penal Code.

33 (e) Notwithstanding whether a victim initiates or
34 maintains an action to satisfy the unpaid restitution order,
35 a victim may propound the form interrogatories
36 approved pursuant to this section once each calendar
37 year. The defendant subject to the restitution order shall,
38 in responding to the interrogatories propounded, provide
39 current information regarding the nature, extent, and



1 location of any assets, income, and liabilities in which the
2 defendant claims a present or future interest.

3 (f) This section shall become operative on January 1,
4 2000.

5 SEC. 3. Section 987 of the Penal Code is amended to
6 read:

7 987. (a) In a noncapital case, if the defendant
8 appears for arraignment without counsel, he or she shall
9 be informed by the court that it is his or her right to have
10 counsel before being arraigned, and shall be asked if he
11 or she desires the assistance of counsel. If he or she desires
12 and is unable to employ counsel the court shall assign
13 counsel to defend him or her.

14 (b) In a capital case, if the defendant appears for
15 arraignment without counsel, the court shall inform him
16 or her that he or she shall be represented by counsel at all
17 stages of the preliminary and trial proceedings and that
18 the representation is at his or her expense if he or she is
19 able to employ counsel or at public expense if he or she
20 is unable to employ counsel, inquire of him or her
21 whether he or she is able to employ counsel and, if so,
22 whether he or she desires to employ counsel of his or her
23 choice or to have counsel assigned, and allow him or her
24 a reasonable time to send for his or her chosen or assigned
25 counsel. If the defendant is unable to employ counsel, the
26 court shall assign counsel to defend him or her. If the
27 defendant is able to employ counsel and either refuses to
28 employ counsel or appears without counsel after having
29 had a reasonable time to employ counsel, the court shall
30 assign counsel.

31 The court shall at the first opportunity inform the
32 defendant's trial counsel, whether retained by the
33 defendant or court-appointed, of the additional duties
34 imposed upon trial counsel in any capital case as set forth
35 in paragraph (1) of subdivision (b) of Section 1240.1.

36 (c) In order to assist the court in determining whether
37 a defendant is able to employ counsel in any case, the
38 court may require a defendant to file a financial
39 statement or other financial information under penalty of
40 perjury with the court or, in its discretion, order a

1 defendant to appear before a county officer designated
2 by the court to make an inquiry into the ability of the
3 defendant to employ his or her own counsel. If a county
4 officer is designated, the county officer shall provide to
5 the court a written recommendation and the reason or
6 reasons in support of the recommendation. The
7 determination by the court shall be made on the record.
8 The financial statement or other financial information
9 obtained from the defendant shall be confidential and
10 privileged and shall not be admissible in evidence in any
11 criminal proceeding except the prosecution of an alleged
12 offense of perjury based upon false material contained in
13 the financial statement. The financial statement shall be
14 made available to the prosecution only for purposes of
15 investigation of an alleged offense of perjury based upon
16 false material contained in the financial statement at the
17 conclusion of the proceedings for which the financial
18 statement was required to be submitted. The financial
19 statement and other financial information obtained from
20 the defendant shall not be confidential and privileged in
21 a proceeding under Section 987.8.

22 (d) In a capital case, the court may appoint an
23 additional attorney as a cocounsel upon a written request
24 of the first attorney appointed. The request shall be
25 supported by an affidavit of the first attorney setting forth
26 in detail the reasons why a second attorney should be
27 appointed. Any affidavit filed with the court shall be
28 confidential and privileged. The court shall appoint a
29 second attorney when it is convinced by the reasons
30 stated in the affidavit that the appointment is necessary
31 to provide the defendant with effective representation.
32 If the request is denied, the court shall state on the record
33 its reasons for denial of the request.

34 (e) This section shall remain in effect only until January
35 1, 2000, and as of that date is repealed, unless a later
36 enacted statute, that is enacted before January 1, 2000,
37 deletes or extends that date.

38 SEC. 4. Section 987 is added to the Penal Code, to
39 read:

1 987. (a) In a noncapital case, if the defendant
2 appears for arraignment without counsel, he or she shall
3 be informed by the court that it is his or her right to have
4 counsel before being arraigned, and shall be asked if he
5 or she desires the assistance of counsel. If he or she desires
6 and is unable to employ counsel the court shall assign
7 counsel to defend him or her.

8 (b) In a capital case, if the defendant appears for
9 arraignment without counsel, the court shall inform him
10 or her that he or she shall be represented by counsel at all
11 stages of the preliminary and trial proceedings and that
12 the representation is at his or her expense if he or she is
13 able to employ counsel or at public expense if he or she
14 is unable to employ counsel, inquire of him or her
15 whether he or she is able to employ counsel and, if so,
16 whether he or she desires to employ counsel of his or her
17 choice or to have counsel assigned, and allow him or her
18 a reasonable time to send for his or her chosen or assigned
19 counsel. If the defendant is unable to employ counsel, the
20 court shall assign counsel to defend him or her. If the
21 defendant is able to employ counsel and either refuses to
22 employ counsel or appears without counsel after having
23 had a reasonable time to employ counsel, the court shall
24 assign counsel.

25 The court shall at the first opportunity inform the
26 defendant's trial counsel, whether retained by the
27 defendant or court-appointed, of the additional duties
28 imposed upon trial counsel in any capital case as set forth
29 in paragraph (1) of subdivision (b) of Section 1240.1.

30 (c) In order to assist the court in determining whether
31 a defendant is able to employ counsel in any case, the
32 court may require a defendant to file a financial
33 statement or other financial information under penalty of
34 perjury with the court or, in its discretion, order a
35 defendant to appear before a county officer designated
36 by the court to make an inquiry into the ability of the
37 defendant to employ his or her own counsel. If a county
38 officer is designated, the county officer shall provide to
39 the court a written recommendation and the reason or
40 reasons in support of the recommendation. The

1 determination by the court shall be made on the record.
2 Except as provided in Section 1214, the financial
3 statement or other financial information obtained from
4 the defendant shall be confidential and privileged and
5 shall not be admissible in evidence in any criminal
6 proceeding except the prosecution of an alleged offense
7 of perjury based upon false material contained in the
8 financial statement. The financial statement shall be
9 made available to the prosecution only for purposes of
10 investigation of an alleged offense of perjury based upon
11 false material contained in the financial statement at the
12 conclusion of the proceedings for which the financial
13 statement was required to be submitted. The financial
14 statement and other financial information obtained from
15 the defendant shall not be confidential and privileged in
16 a proceeding under Section 987.8.

17 (d) In a capital case, the court may appoint an
18 additional attorney as a cocounsel upon a written request
19 of the first attorney appointed. The request shall be
20 supported by an affidavit of the first attorney setting forth
21 in detail the reasons why a second attorney should be
22 appointed. Any affidavit filed with the court shall be
23 confidential and privileged. The court shall appoint a
24 second attorney when it is convinced by the reasons
25 stated in the affidavit that the appointment is necessary
26 to provide the defendant with effective representation.
27 If the request is denied, the court shall state on the record
28 its reasons for denial of the request.

29 (e) This section shall become operative on January 1,
30 2000.

31 SEC. 5. Section 1202.4 of the Penal Code is amended
32 to read:

33 1202.4. (a) (1) It is the intent of the Legislature that
34 a victim of crime who incurs any economic loss as a result
35 of the commission of a crime shall receive restitution
36 directly from any defendant convicted of that crime.

37 (2) Upon a person being convicted of any crime in the
38 State of California, the court shall order the defendant to
39 pay a fine in the form of a penalty assessment in
40 accordance with Section 1464.



(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment pursuant to Section 1214.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars (\$200), and not more than ten thousand dollars (\$10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars (\$100), and not more than one thousand dollars (\$1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars (\$200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar (\$200) or one-hundred-dollar (\$100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar (\$200) or one-hundred-dollar (\$100) minimum, the court

1 shall consider any relevant factors including, but not
2 limited to, the defendant's inability to pay, the seriousness
3 and gravity of the offense and the circumstances of its
4 commission, any economic gain derived by the defendant
5 as a result of the crime, the extent to which any other
6 person suffered any losses as a result of the crime, and the
7 number of victims involved in the crime. Those losses
8 may include pecuniary losses to the victim or his or her
9 dependents as well as intangible losses, such as
10 psychological harm caused by the crime. Consideration of
11 a defendant's inability to pay may include his or her
12 future earning capacity. A defendant shall bear the
13 burden of demonstrating his or her inability to pay.
14 Express findings by the court as to the factors bearing on
15 the amount of the fine shall not be required. A separate
16 hearing for the fine shall not be required.

17 (e) The restitution fine shall not be subject to penalty
18 assessments as provided in Section 1464, and shall be
19 deposited in the Restitution Fund in the State Treasury.

20 (f) In every case in which a victim has suffered
21 economic loss as a result of the defendant's conduct, the
22 court shall require that the defendant make restitution to
23 the victim or victims in an amount established by court
24 order, based on the amount of loss claimed by the victim
25 or victims or any other showing to the court. If the
26 amount of loss cannot be ascertained at the time of
27 sentencing, the restitution order shall include a provision
28 that the amount shall be determined at the direction of
29 the court. The court shall order full restitution unless it
30 finds compelling and extraordinary reasons for not doing
31 so, and states them on the record.

32 (1) The defendant has the right to a hearing before a
33 judge to dispute the determination of the amount of
34 restitution. The court may modify the amount, on its own
35 motion or on the motion of the district attorney, the
36 victim or victims, or the defendant. If a motion is made
37 for modification of a restitution order, the victim shall be
38 notified of that motion at least 10 days prior to the
39 proceeding held to decide the motion.



1 (2) Determination of the amount of restitution
2 ordered pursuant to this subdivision shall not be affected
3 by the indemnification or subrogation rights of any third
4 party. Restitution payments made pursuant to this
5 subdivision shall be made to the Restitution Fund to the
6 extent that the victim, as defined in subdivision (k), has
7 received assistance pursuant to Article 1 (commencing
8 with Section 13959) of Chapter 5 of Part 4 of Division 3 of
9 Title 2 of the Government Code.

10 (3) To the extent possible, the restitution order shall
11 be prepared by the sentencing court, shall identify each
12 victim and each loss to which it pertains, and shall be of
13 a dollar amount that is sufficient to fully reimburse the
14 victim or victims for every determined economic loss
15 incurred as the result of the defendant's criminal
16 conduct, including, but not limited to, all of the following:

17 (A) Full or partial payment for the value of stolen or
18 damaged property. The value of stolen or damaged
19 property shall be the replacement cost of like property,
20 or the actual cost of repairing the property when repair
21 is possible.

22 (B) Medical expenses.

23 (C) Wages or profits lost due to injury incurred by the
24 victim, and if the victim is a minor, wages or profits lost
25 by the minor's parent, parents, guardian, or guardians,
26 while caring for the injured minor.

27 (D) Wages or profits lost by the victim, and if the
28 victim is a minor, wages or profits lost by the minor's
29 parent, parents, guardian, or guardians, due to time spent
30 as a witness or in assisting the police or prosecution.

31 (E) Noneconomic losses, including, but not limited to,
32 psychological harm, for felony violations of Section 288.

33 (F) Interest, at the rate of 10 percent per annum, that
34 accrues as of the date of sentencing or loss, as determined
35 by the court.

36 (G) Actual and reasonable attorney's fees and other
37 costs of collection accrued by a private entity on behalf of
38 the victim.

39 (g) The court shall order full restitution unless it finds
40 compelling and extraordinary reasons for not doing so,

1 and states those reasons on the record. A defendant's
2 inability to pay shall not be considered a compelling and
3 extraordinary reason not to impose a restitution order,
4 nor shall inability to pay be a consideration in
5 determining the amount of a restitution order.

6 (h) The district attorney may request an order of
7 examination pursuant to the procedures specified in
8 Article 2 (commencing with Section 708.110) of Chapter
9 6 of Division 2 of Title 9 of Part 2 of the Code of Civil
10 Procedure, in order to determine the defendant's
11 financial assets for purposes of collecting on the
12 restitution order.

13 (i) A restitution order imposed pursuant to subdivision
14 (f) shall be enforceable as if the order were a civil
15 judgment, pursuant to Section 1214.

16 (j) The making of a restitution order pursuant to
17 subdivision (f) shall not affect the right of a victim to
18 recovery from the Restitution Fund as otherwise
19 provided by law, except to the extent that restitution is
20 actually collected pursuant to the order. Restitution
21 collected pursuant to this subdivision shall be credited to
22 any other judgments for the same losses obtained against
23 the defendant arising out of the crime for which the
24 defendant was convicted.

25 (k) For purposes of this section, "victim" shall include
26 the immediate surviving family of the actual victim.
27 "Victim" shall also include any corporation, business
28 trust, estate, trust, partnership, association, joint venture,
29 government, governmental subdivision, agency, or
30 instrumentality, or any other legal or commercial entity
31 when that entity is a direct victim of a crime.

32 (l) At its discretion, the board of supervisors of any
33 county may impose a fee to cover the actual
34 administrative cost of collecting the restitution fine, not
35 to exceed 10 percent of the amount ordered to be paid,
36 to be added to the restitution fine and included in the
37 order of the court, the proceeds of which shall be
38 deposited in the general fund of the county.

39 (m) In every case in which the defendant is granted
40 probation, the court shall make the payment of

1 restitution fines and orders imposed pursuant to this
2 section a condition of probation. Any portion of a
3 restitution order that remains unsatisfied after a
4 defendant is no longer on probation shall continue to be
5 enforceable by a victim pursuant to Section 1214 until the
6 obligation is satisfied.

7 (n) If the court finds and states on the record
8 compelling and extraordinary reasons why a restitution
9 fine or full restitution order should not be required, the
10 court shall order, as a condition of probation, that the
11 defendant perform specified community service, unless
12 it finds and states on the record compelling and
13 extraordinary reasons not to require community service
14 in addition to the finding that restitution should not be
15 required. Upon revocation of probation, the court shall
16 impose restitution pursuant to this section.

17 (o) The provisions of Section 13966.01 of the
18 Government Code shall apply to restitution imposed
19 pursuant to this section.

20 (p) This section shall remain in effect only until
21 January 1, 2000, and as of that date is repealed, unless a
22 later enacted statute, that is enacted before January 1,
23 2000, deletes or extends that date.

24 SEC. 6. Section 1202.4 is added to the Penal Code, to
25 read:

26 1202.4. (a) (1) It is the intent of the Legislature that
27 a victim of crime who incurs any economic loss as a result
28 of the commission of a crime shall receive restitution
29 directly from any defendant convicted of that crime.

30 (2) Upon a person being convicted of any crime in the
31 State of California, the court shall order the defendant to
32 pay a fine in the form of a penalty assessment in
33 accordance with Section 1464.

34 (3) The court, in addition to any other penalty
35 provided or imposed under the law, shall order the
36 defendant to pay both of the following:

37 (A) A restitution fine in accordance with subdivision
38 (b).

39 (B) Restitution to the victim or victims, if any, in
40 accordance with subdivision (f), which shall be

1 enforceable as if the order were a civil judgment pursuant
2 to Section 1214.

3 (b) In every case where a person is convicted of a
4 crime, the court shall impose a separate and additional
5 restitution fine, unless it finds compelling and
6 extraordinary reasons for not doing so, and states those
7 reasons on the record.

8 (1) The restitution fine shall be set at the discretion of
9 the court and commensurate with the seriousness of the
10 offense, but shall not be less than two hundred dollars
11 (\$200), and not more than ten thousand dollars (\$10,000),
12 if the person is convicted of a felony, and shall not be less
13 than one hundred dollars (\$100), and not more than one
14 thousand dollars (\$1,000), if the person is convicted of a
15 misdemeanor.

16 (2) In setting a felony restitution fine, the court may
17 determine the amount of the fine as the product of two
18 hundred dollars (\$200) multiplied by the number of years
19 of imprisonment the defendant is ordered to serve,
20 multiplied by the number of felony counts of which the
21 defendant is convicted.

22 (c) The court shall impose the restitution fine unless it
23 finds compelling and extraordinary reasons for not doing
24 so, and states those reasons on the record. A defendant's
25 inability to pay shall not be considered a compelling and
26 extraordinary reason not to impose a restitution fine.
27 Inability to pay may be considered only in increasing the
28 amount of the restitution fine in excess of the
29 two-hundred-dollar (\$200) or one-hundred-dollar (\$100)
30 minimum.

31 (d) In setting the amount of the fine pursuant to
32 subdivision (b) in excess of the two-hundred-dollar
33 (\$200) or one-hundred-dollar (\$100) minimum, the court
34 shall consider any relevant factors including, but not
35 limited to, the defendant's inability to pay, the seriousness
36 and gravity of the offense and the circumstances of its
37 commission, any economic gain derived by the defendant
38 as a result of the crime, the extent to which any other
39 person suffered any losses as a result of the crime, and the
40 number of victims involved in the crime. Those losses

1 may include pecuniary losses to the victim or his or her
2 dependents as well as intangible losses, such as
3 psychological harm caused by the crime. Consideration of
4 a defendant's inability to pay may include his or her
5 future earning capacity. A defendant shall bear the
6 burden of demonstrating his or her inability to pay.
7 Express findings by the court as to the factors bearing on
8 the amount of the fine shall not be required. A separate
9 hearing for the fine shall not be required.

10 (e) The restitution fine shall not be subject to penalty
11 assessments as provided in Section 1464, and shall be
12 deposited in the Restitution Fund in the State Treasury.

13 (f) In every case in which a victim has suffered
14 economic loss as a result of the defendant's conduct, the
15 court shall require that the defendant make restitution to
16 the victim or victims in an amount established by court
17 order, based on the amount of loss claimed by the victim
18 or victims or any other showing to the court. If the
19 amount of loss cannot be ascertained at the time of
20 sentencing, the restitution order shall include a provision
21 that the amount shall be determined at the direction of
22 the court. The court shall order full restitution unless it
23 finds compelling and extraordinary reasons for not doing
24 so, and states them on the record.

25 (1) The defendant has the right to a hearing before a
26 judge to dispute the determination of the amount of
27 restitution. The court may modify the amount, on its own
28 motion or on the motion of the district attorney, the
29 victim or victims, or the defendant. If a motion is made
30 for modification of a restitution order, the victim shall be
31 notified of that motion at least 10 days prior to the
32 proceeding held to decide the motion.

33 (2) Determination of the amount of restitution
34 ordered pursuant to this subdivision shall not be affected
35 by the indemnification or subrogation rights of any third
36 party. Restitution payments made pursuant to this
37 subdivision shall be made to the Restitution Fund to the
38 extent that the victim, as defined in subdivision (k), has
39 received assistance pursuant to Article 1 (commencing

1 with Section 13959) of Chapter 5 of Part 4 of Division 3 of
2 Title 2 of the Government Code.

3 (3) To the extent possible, the restitution order shall
4 be prepared by the sentencing court, shall identify each
5 victim and each loss to which it pertains, and shall be of
6 a dollar amount that is sufficient to fully reimburse the
7 victim or victims for every determined economic loss
8 incurred as the result of the defendant's criminal
9 conduct, including, but not limited to, all of the following:

10 (A) Full or partial payment for the value of stolen or
11 damaged property. The value of stolen or damaged
12 property shall be the replacement cost of like property,
13 or the actual cost of repairing the property when repair
14 is possible.

15 (B) Medical expenses.

16 (C) Wages or profits lost due to injury incurred by the
17 victim, and if the victim is a minor, wages or profits lost
18 by the minor's parent, parents, guardian, or guardians,
19 while caring for the injured minor.

20 (D) Wages or profits lost by the victim, and if the
21 victim is a minor, wages or profits lost by the minor's
22 parent, parents, guardian, or guardians, due to time spent
23 as a witness or in assisting the police or prosecution.

24 (E) Noneconomic losses, including, but not limited to,
25 psychological harm, for felony violations of Section 288.

26 (F) Interest, at the rate of 10 percent per annum, that
27 accrues as of the date of sentencing or loss, as determined
28 by the court.

29 (G) Actual and reasonable attorney's fees and other
30 costs of collection accrued by a private entity on behalf of
31 the victim.

32 (4) Except as provided in paragraph (5), in any case
33 in which an order is entered pursuant to this subdivision,
34 the defendant shall prepare and file a disclosure
35 identifying all assets, income, and liabilities in which the
36 defendant held or controlled a present or future interest
37 as of the date of the defendant's arrest for the crime for
38 which restitution may be ordered. This disclosure shall be
39 available to the victim pursuant to Section 1214, and any
40 use the court may make of the disclosure shall be subject

1 to the restrictions of subdivision (g). The disclosure shall
2 be signed by the defendant upon a form approved or
3 adopted by the Judicial Council for the purpose of
4 facilitating the disclosure. Any defendant who willfully
5 states as true any material matter that he or she knows to
6 be false on the disclosure required by this subdivision is
7 guilty of a misdemeanor, *unless this conduct is punishable*
8 *as perjury or another provision of law provides for a*
9 *greater penalty.*

10 (5) A defendant who fails to file the financial
11 disclosure required in paragraph (4), but who has filed a
12 financial affidavit or financial information pursuant to
13 subdivision (c) of Section 987, shall be deemed to have
14 waived the confidentiality of that affidavit or financial
15 information as to a victim in whose favor the order of
16 restitution is entered pursuant to subdivision (f). The
17 affidavit or information shall serve in lieu of the financial
18 disclosure required in paragraph (4), and paragraphs (6),
19 (7), (8), and (9) shall not apply.

20 (6) Except as provided in paragraph (5), the
21 defendant shall file the disclosure with the clerk of the
22 court no later than the date set for the defendant's
23 sentencing, unless otherwise directed by the court. The
24 disclosure may be inspected or copied as provided by
25 subdivision (b), (c), or (d) of Section 1203.05.

26 (7) In its discretion, the court may relieve the
27 defendant of the duty under paragraph (6) of filing with
28 the clerk by requiring the defendant's disclosure be
29 submitted as an attachment to, and be available to, those
30 authorized to receive the following:

31 (A) Any report submitted pursuant to subparagraph
32 (C) of paragraph (2) of subdivision (b) of Section 1203 or
33 subdivision (g) of Section 1203.

34 (B) Any stipulation submitted pursuant to paragraph
35 (4) of subdivision (b) of Section 1203.

36 (C) Any report by the probation officer, or any
37 information submitted by the defendant applying for a
38 conditional sentence pursuant to subdivision (d) of
39 Section 1203.

1 (8) The court may consider a defendant's
2 unreasonable failure to make a complete disclosure
3 pursuant to paragraph (4) as any of the following:

4 (A) A circumstance in aggravation of the crime in
5 imposing a term under subdivision (b) of Section 1170.

6 (B) A factor indicating that the interests of justice
7 would not be served by admitting the defendant to
8 probation under Section 1203.

9 (C) A factor indicating that the interests of justice
10 would not be served by conditionally sentencing the
11 defendant under Section 1203.

12 (D) A factor indicating that the interests of justice
13 would not be served by imposing less than the maximum
14 fine and sentence fixed by law for the case.

15 (9) A defendant's failure or refusal to make the
16 required disclosure pursuant to paragraph (4) shall not
17 delay entry of an order of restitution or pronouncement
18 of sentence. In appropriate cases, the court may do any
19 of the following:

20 (A) Require the defendant to be examined by the
21 district attorney pursuant to subdivision (h).

22 (B) If sentencing the defendant under Section 1170,
23 provide that the victim shall receive a copy of the portion
24 of the probation report filed pursuant to Section 1203.10
25 concerning the defendant's employment, occupation,
26 finances, and liabilities.

27 (C) If sentencing the defendant under Section 1203,
28 set a date and place for submission of the disclosure
29 required by paragraph (4) as a condition of probation or
30 suspended sentence.

31 (g) The court shall order full restitution unless it finds
32 compelling and extraordinary reasons for not doing so,
33 and states those reasons on the record. A defendant's
34 inability to pay shall not be considered a compelling and
35 extraordinary reason not to impose a restitution order,
36 nor shall inability to pay be a consideration in
37 determining the amount of a restitution order.

38 (h) The district attorney may request an order of
39 examination pursuant to the procedures specified in
40 Article 2 (commencing with Section 708.110) of Chapter

1 6 of Division 2 of Title 9 of Part 2 of the Code of Civil
2 Procedure, in order to determine the defendant's
3 financial assets for purposes of collecting on the
4 restitution order.

5 (i) A restitution order imposed pursuant to subdivision
6 (f) shall be enforceable as if the order were a civil
7 judgment, pursuant to Section 1214.

8 (j) The making of a restitution order pursuant to
9 subdivision (f) shall not affect the right of a victim to
10 recovery from the Restitution Fund as otherwise
11 provided by law, except to the extent that restitution is
12 actually collected pursuant to the order. Restitution
13 collected pursuant to this subdivision shall be credited to
14 any other judgments for the same losses obtained against
15 the defendant arising out of the crime for which the
16 defendant was convicted.

17 (k) For purposes of this section, "victim" shall include
18 the immediate surviving family of the actual victim.
19 "Victim" shall also include any corporation, business
20 trust, estate, trust, partnership, association, joint venture,
21 government, governmental subdivision, agency, or
22 instrumentality, or any other legal or commercial entity
23 when that entity is a direct victim of a crime.

24 (l) At its discretion, the board of supervisors of any
25 county may impose a fee to cover the actual
26 administrative cost of collecting the restitution fine, not
27 to exceed 10 percent of the amount ordered to be paid,
28 to be added to the restitution fine and included in the
29 order of the court, the proceeds of which shall be
30 deposited in the general fund of the county.

31 (m) In every case in which the defendant is granted
32 probation, the court shall make the payment of
33 restitution fines and orders imposed pursuant to this
34 section a condition of probation. Any portion of a
35 restitution order that remains unsatisfied after a
36 defendant is no longer on probation shall continue to be
37 enforceable by a victim pursuant to Section 1214 until the
38 obligation is satisfied.

39 (n) If the court finds and states on the record
40 compelling and extraordinary reasons why a restitution

1 fine or full restitution order should not be required, the
2 court shall order, as a condition of probation, that the
3 defendant perform specified community service, unless
4 it finds and states on the record compelling and
5 extraordinary reasons not to require community service
6 in addition to the finding that restitution should not be
7 required. Upon revocation of probation, the court shall
8 impose restitution pursuant to this section.

9 (o) The provisions of Section 13966.01 of the
10 Government Code shall apply to restitution imposed
11 pursuant to this section.

12 (p) (1) This section shall become operative on
13 January 1, 2000, except when all of the following apply:

14 (A) A majority of judges of a court apply to the Judicial
15 Council for an extension.

16 (B) The judicial application described in paragraph
17 (1) documents the need for time to adjust restitution
18 procedures and practices, as well as to facilitate judicial
19 education and training in direct restitution to victims
20 under subdivision (f).

21 (C) The Judicial Council grants the extension upon
22 finding good cause.

23 (2) Upon the grant of an extension pursuant to the
24 application of a court under this subdivision, the
25 provisions of former Section 1214 shall continue to apply
26 with respect to that court. The extension may be for any
27 period of time set by the Judicial Council, but shall not
28 exceed January 1, 2002, in any case.

29 SEC. 7. Section 1214 of the Penal Code is amended to
30 read:

31 1214. (a) If the judgment is for a fine, including a
32 restitution fine ordered pursuant to Section 1202.4 or
33 Section 1203.04, as operative on or before August 2, 1995,
34 or Section 13967 of the Government Code, as operative on
35 or before September 28, 1994, with or without
36 imprisonment, the judgment may be enforced in the
37 manner provided for the enforcement of money
38 judgments generally.

39 (b) In any case in which a defendant is ordered to pay
40 restitution, the order to pay restitution (1) is deemed a

1 money judgment if the defendant was informed of his or
 2 her right to have a judicial determination of the amount
 3 and was provided with a hearing, waived a hearing, or
 4 stipulated to the amount of the restitution ordered, and
 5 (2) shall be fully enforceable by a victim as if the
 6 restitution order were a civil judgment, and enforceable
 7 in the same manner as is provided for the enforcement of
 8 any other money judgment. Upon the victim's request,
 9 the court shall provide the victim in whose favor the
 10 order of restitution is entered with a certified copy of that
 11 order. In addition, upon request, the court shall provide
 12 the State Board of Control with a certified copy of any
 13 order imposing a restitution fine or order. A victim shall
 14 have access to all resources available under the law to
 15 enforce the restitution order, including, but not limited
 16 to, access to the defendant's financial records, use of wage
 17 garnishment and lien procedures, information regarding
 18 the defendant's assets, and the ability to apply for
 19 restitution from any fund established for the purpose of
 20 compensating victims in civil cases. Any portion of a
 21 restitution order that remains unsatisfied after a
 22 defendant is no longer on probation or parole is
 23 enforceable by the victim pursuant to this section.
 24 Victims and the State Board of Control shall inform the
 25 court whenever an order to pay restitution is satisfied.

26 (c) Chapter 3 (commencing with Section 683.010) of
 27 Division 1 of Title 9 of Part 2 of the Code of Civil
 28 Procedure shall not apply to a judgment for any fine or
 29 restitution ordered pursuant to Section 1202.4 or Section
 30 1203.04, as operative on or before August 2, 1995, or
 31 Section 13967 of the Government Code, as operative on
 32 or before September 28, 1994.

33 (d) This section shall remain in effect only until
 34 January 1, 2000, and as of that date is repealed, unless a
 35 later enacted statute, that is enacted before January 1,
 36 2000, deletes or extends that date.

37 SEC. 8. Section 1214 is added to the Penal Code, to
 38 read:

39 1214. (a) If the judgment is for a fine, including a
 40 restitution fine ordered pursuant to Section 1202.4 or

1 Section 1203.04 as operative on or before August 2, 1995,
2 or Section 13967 of the Government Code, as operative on
3 or before September 28, 1994, with or without
4 imprisonment, the judgment may be enforced in the
5 manner provided for the enforcement of money
6 judgments generally.

7 (b) In any case in which a defendant is ordered to pay
8 restitution, the order to pay restitution (1) is deemed a
9 money judgment if the defendant was informed of his or
10 her right to have a judicial determination of the amount
11 and was provided with a hearing, waived a hearing, or
12 stipulated to the amount of the restitution ordered, and
13 (2) shall be fully enforceable by a victim as if the
14 restitution order were a civil judgment, and enforceable
15 in the same manner as is provided for the enforcement of
16 any other money judgment. Upon the victim's request,
17 the court shall provide the victim in whose favor the
18 order of restitution is entered with a certified copy of that
19 order and a copy of the defendant's disclosure pursuant
20 to paragraph (4) of subdivision (f) of Section 1202.4, or
21 affidavit or information pursuant to paragraph (5) of
22 subdivision (f) of Section 1202.4, or report pursuant to
23 paragraph (7) of subdivision (f) of Section 1202.4. The
24 court also shall provide this information to the district
25 attorney upon request *in connection with an*
26 *investigation or prosecution involving perjury or the*
27 *veracity of the information contained within the*
28 *defendant's financial disclosure.* In addition, upon
29 request, the court shall provide the State Board of Control
30 with a certified copy of any order imposing a restitution
31 fine or order and a copy of the defendant's disclosure
32 pursuant to paragraph (4) of subdivision (f) of Section
33 1202.4, or affidavit or information pursuant to paragraph
34 (5) of subdivision (f) of Section 1202.4, or report pursuant
35 to paragraph (7) of subdivision (f) of Section 1202.4. A
36 victim shall have access to all resources available under
37 the law to enforce the restitution order, including, but not
38 limited to, access to the defendant's financial records, use
39 of wage garnishment and lien procedures, information
40 regarding the defendant's assets, and the ability to apply

1 for restitution from any fund established for the purpose
2 of compensating victims in civil cases. Any portion of a
3 restitution order that remains unsatisfied after a
4 defendant is no longer on probation or parole is
5 enforceable by the victim pursuant to this section.
6 Victims and the State Board of Control shall inform the
7 court whenever an order to pay restitution is satisfied.

8 (c) Chapter 3 (commencing with Section 683.010) of
9 Division 1 of Title 9 of Part 2 of the Code of Civil
10 Procedure shall not apply to a judgment for any fine or
11 restitution ordered pursuant to Section 1202.4 or Section
12 1203.04 as operative on or before August 2, 1995, or
13 Section 13967 of the Government Code, as operative on
14 or before September 28, 1994.

15 (d) (1) This section shall become operative on
16 January 1, 2000, except when all of the following apply:

17 (A) A majority of judges of a court apply to the Judicial
18 Council for an extension.

19 (B) The judicial application described in paragraph
20 (1) documents the need for time to adjust restitution
21 procedures and practices, as well as to facilitate judicial
22 education and training in direct restitution to victims
23 under subdivision (f).

24 (C) The Judicial Council grants the extension upon
25 finding good cause.

26 (2) Upon the grant of an extension pursuant to the
27 application of a court under this subdivision, the
28 provisions of former Section 1202.4 shall continue to apply
29 with respect to that court. The extension may be for any
30 period of time set by the Judicial Council, but shall not
31 exceed January 1, 2002, in any case.

32 SEC. 9. Section 11177.2 of the Penal Code is amended
33 to read:

34 11177.2. (a) No parolee or inmate may be released on
35 parole to reside in any other receiving state if the parolee
36 or inmate is subject to an unsatisfied order of restitution
37 to a victim or a restitution fine within the sending state.

38 (b) A parolee or inmate may be granted an exception
39 to the prohibition in subdivision (a) if the parolee or

1 inmate posts a bond for the amount of the restitution
2 order.

3 (c) A parolee or inmate may petition the court for a
4 hearing to determine whether, in the interests of justice,
5 the prohibition against leaving the state should be
6 waived. This section shall not be construed to allow the
7 reduction or waiver of a restitution order or fine.

8 SEC. 10. *The provisions of this act are severable. If*
9 *any provision of this act or its application is held invalid,*
10 *that invalidity shall not affect other provisions or*
11 *applications that can be given effect without the invalid*
12 *provision or application.*

13 SEC. 11. No reimbursement is required by this act
14 pursuant to Section 6 of Article XIII B of the California
15 Constitution because the only costs that may be incurred
16 by a local agency or school district will be incurred
17 because this act creates a new crime or infraction,
18 eliminates a crime or infraction, or changes the penalty
19 for a crime or infraction, within the meaning of Section
20 17556 of the Government Code, or changes the definition
21 of a crime within the meaning of Section 6 of Article
22 XIII B of the California Constitution.

23 Notwithstanding Section 17580 of the Government
24 Code, unless otherwise specified, the provisions of this act
25 shall become operative on the same date that the act
26 takes effect pursuant to the California Constitution.

